

1 JOHNNIE A. JAMES, CA Bar No. 144091

johnnie.james@ogletree.com

2 MINH P. NGO, CA Bar No. 302230

minh.ngo@ogletree.com

3 OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

4 400 South Hope Street, Suite 1200

Los Angeles, CA 90071

5 Telephone: 213.239.9800

Facsimile: 213.239.9045

6 Attorneys for Defendant

7 PETSMART, INC.

NOTE: CHANGES MADE BY THE COURT

8 **UNITED STATES DISTRICT COURT**

9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 HANA KING, an individual,

12 Plaintiff,

13 v.

14 PETSMART, INC., a Delaware
15 corporation; and DOES 1 through 50,
inclusive,

16 Defendants.

Case No. 2:18-cv-4517 JAK (JPRx)

STIPULATED PROTECTIVE ORDER

Complaint Filed: January 10, 2018

Removal Date: May 24, 2018

Trial Date: None

District Judge: Hon. John A. Kronstadt,
Courtroom 10B, First St.

Magistrate Judge: Hon. Jean P. Rosenbluth,
Courtroom 690, Roybal

1. INTRODUCTION

1.1 PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

1.2 GOOD CAUSE STATEMENT

Good cause exists for the entry of this stipulated pretrial protective order as follows:

a. In this action, plaintiff Hana King (“Plaintiff”) asserts the following causes of action against defendant PetSmart, Inc. (“Defendant”): (1) Wrongful Termination in Violation of Public Policy (Government Code § 12940, *et seq.*); (2) Discrimination Based Upon Disability (Government Code § 12940, *et seq.*); (3) Failure to Accommodate (Government Code § 12940, *et seq.*); (4) Failure to Engage In The Interactive Process (Government Code § 12940, *et seq.*); (5) Retaliation; (Government Code §12940, *et seq.*); (6) Failure to Take All Reasonable Steps To Prevent Discrimination and Retaliation (Government Code § 12940, *et seq.*); (7) Violation of California Family Rights Act; (8) Intentional Infliction of Emotional Distress; (9) Failure to Pay Wages (Labor Code §§ 204, 207); (10) Violation of Rest

1 Period (Industrial Welfare Commission Wage Orders; Labor Code §226.7); (11)
2 Violation of Meal Period Law (Labor Code §§ 226.7, 512); (12) Violation of Wage
3 and Hour Laws – Unpaid Overtime Wages (Labor Code §§ 510, 1194); (13)
4 Violation of Wage and Hour Laws – Waiting Time Penalties (Labor Code §§ 202,
5 203); (14) Failure to Provide Accurate Wage Statements (Labor Code § 226); (15)
6 Unfair Competition In Violation of Business and Professions Code § 17200, *et seq.*

7 b. Based on the nature of this case, the allegations asserted by Plaintiff,
8 and the discovery requests anticipated in this action, the parties reasonably anticipate
9 that documents, materials, and other information to be exchanged in discovery may
10 reveal private, confidential, and/or proprietary information of Defendant's business
11 policies and practices. Such materials, to the extent they are discoverable in this
12 action, could reveal confidential information concerning: Defendant's employment
13 practices, Defendant's business operations, Defendant's services, Defendant's
14 finances, Defendant's clients, Defendant's employees, and information otherwise
15 generally unavailable to the public, or which may be privileged or otherwise
16 protected from disclosure under state or federal statutes, court rules, case decisions,
17 or common law.

18 c. Due to the nature of the information described herein, Defendant's
19 business interests may suffer harm if such information is disclosed publicly.
20 Potential harm that may result from the public disclosure of such information may
21 include, but is not limited to, economic losses, loss of competitive advantages, and
22 diminution of good-will. Accordingly, to expedite the flow of information, to
23 facilitate the prompt resolution of disputes over confidentiality of discovery
24 materials, to adequately protect information the parties believe they are entitled to
25 keep confidential, to ensure that the parties are permitted reasonable necessary uses
26 of such material in preparation for and in the conduct of trial, to address their
27 handling at the end of the litigation, and serve the ends of justice, a protective order
28 for such information is justified in this matter. It is the intent of the parties that

information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

2. DEFINITIONS

2.1 Action: this pending federal lawsuit titled *Hana King v. PetSmart, Inc., et al., case no. 2:18-cv-4517 JAK (JPRx)*, now pending in the Central District of California.

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action.

2.8 House Counsel: attorneys who are employees of a Party to this Action. House Counsel does not include Outside Counsel of Record or any other outside

counsel.

2.9 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.10 Outside Counsel of Record: attorneys who are not employees of a Party to this Action, but are retained to represent or advise a Party to this Action and have appeared in this Action on behalf of that Party or are affiliated with a law firm which has appeared on behalf of that Party, and includes support staff.

2.11 Party: any Party to this Action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staff).

2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this Action.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

Any use of Protected Material at trial shall be governed by the orders of the trial judge. This Order does not govern the use of Protected Material at trial.

1 4. DURATION

2 Even after final disposition of this litigation, the confidentiality obligations
3 imposed by this Order will remain in effect until a Designating Party agrees
4 otherwise in writing or a court order otherwise directs. Final disposition will be
5 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
6 or without prejudice; and (2) final judgment herein after the completion and
7 exhaustion of all appeals, re-hearings, remands, trials, or reviews of this Action,
8 including the time limits for filing any motions or applications for extension of time
9 pursuant to applicable law.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 EXERCISE OF RESTRAINT AND CARE IN DESIGNATING
12 MATERIAL FOR PROTECTION

13 Each Party or Non-Party that designates information or items for protection
14 under this Order must take care to limit any such designation to specific material that
15 qualifies under the appropriate standards. The Designating Party must designate for
16 protection only those parts of material, documents, items, or oral or written
17 communications that qualify so that other portions of the material, documents, items,
18 or communications for which protection is not warranted are not swept unjustifiably
19 within the ambit of this Order.

20 Mass, indiscriminate, or routinized designations are prohibited. Designations
21 that are shown to be clearly unjustified or that have been made for an improper
22 purpose (e.g., to unnecessarily encumber the case development process or to impose
23 unnecessary expenses and burdens on other parties) may expose the Designating
24 Party to sanctions.

25 If it comes to a Designating Party's attention that information or items that it
26 designated for protection do not qualify for protection, the Designating Party must
27 promptly notify all other Parties that it is withdrawing the inapplicable designation.

28 5.2 MANNER AND TIMING OF DESIGNATIONS

1 Except as otherwise provided in this Order (see, e.g., second paragraph of
2 section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery
3 Material that qualifies for protection under this Order must be clearly so designated
4 before the material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (e.g., paper or electronic
7 documents, but excluding transcripts of depositions or other pretrial or trial
8 proceedings), that the Producing Party affix at a minimum, the legend
9 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
10 contains protected material. If only a portion or portions of the material on a page
11 qualifies for protection, the Producing Party also must clearly identify the protected
12 portion(s) (e.g., by making appropriate markings in the margins).

13 A Party or Non-Party that makes original documents available for inspection
14 need not designate them for protection until after the inspecting Party has indicated
15 which documents it would like copied and produced. During the inspection and
16 before the designation, all of the material made available for inspection shall be
17 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents
18 it wants copied and produced, the Producing Party must determine which documents,
19 or portions thereof, qualify for protection under this Order. Then, before producing
20 the specified documents, the Producing Party must affix the “CONFIDENTIAL
21 legend” to each page that contains Protected Material. If only a portion or portions of
22 the material on a page qualifies for protection, the Producing Party also must clearly
23 identify the protected portion(s) (e.g., by making appropriate markings in the
24 margins).

25 (b) for testimony given in depositions, that the Designating Party
26 identify the Disclosure or Discovery Material on the record before the close of the
27 deposition all protected testimony. Pages of transcribed deposition testimony or
28 exhibits to depositions that reveal Protected Material may be separately bound by the

1 court reporter and may not be disclosed to anyone except as permitted under this
2 Stipulated Protective Order; and

3 (c) for information produced in some form other than documentary and for
4 any other tangible items, that the Producing Party affix in a prominent place on the
5 exterior of the container or containers in which the information is stored the
6 CONFIDENTIAL legend. If only a portion or portions of the information warrants
7 protection, the Producing Party, to the extent practicable, shall identify the protected
8 portion(s).

9 5.3 INADVERTENT FAILURES TO DESIGNATE

10 If timely corrected, an inadvertent failure to designate qualified information or
11 items does not, standing alone, waive the Designating Party's right to secure
12 protection under this Order for such material. Upon timely correction of a
13 designation, the Receiving Party must make reasonable efforts to assure that the
14 material is treated in accordance with the provisions of this Order.

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
17 designation of confidentiality at any time that is consistent with the Court's
18 Scheduling Order.

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
20 resolution process under Local Rule 37.1 et seq., and, if necessary, file a discovery
21 motion.

22 6.3 Burden of Persuasion. The burden of persuasion in any such challenge
23 proceeding shall be on the Designating Party. Frivolous challenges, and those made
24 for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens
25 on other Parties) may expose the Challenging Party to sanctions. Unless the
26 Designating Party has waived or withdrawn the confidentiality designation, all
27 Parties shall continue to afford the material in question the level of protection to
28 which it is entitled under the Producing Party's designation until the Court rules on

the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

(a) the Receiving Party’s Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b)) In-house counsel to the undersigned Parties and the paralegal, clerical and secretarial staff employed by such counsel.

(c) the officers, directors, and employees of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to be Bound (Exhibit A) ;

(d) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(e) the court and its personnel;
(f) court reporters and their staff;
(g) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(h) any deposition, hearing or trial witness in the Action who was the author or recipient of a document containing the information or a custodian or other person who otherwise previously possessed or knew the information;

(i) any deposition, hearing or trial witness in the Action to whom disclosure is reasonably necessary provided they have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),.

(j) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions or appointed by the Court.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party, which shall include a copy of the subpoena or court order unless prohibited by law;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with

1 the subpoena or court order shall not produce any information designated in this
2 action as “CONFIDENTIAL” before a determination by the court from which the
3 subpoena or order issued, unless the Party has obtained the Designating Party’s
4 permission or a court so orders. The Designating Party shall bear the burden and
5 expense of seeking protection in that court of its confidential material and nothing in
6 these provisions should be construed as authorizing or encouraging a Receiving
7 Party in this Action to disobey a lawful directive from another court.

8 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
9 PRODUCED IN THIS LITIGATION

10 (a) The terms of this Order are applicable to information produced by a
11 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
12 produced by Non-Parties in connection with this litigation is protected by the
13 remedies and relief provided by this Order. Nothing in these provisions should be
14 construed as prohibiting a Non-Party from seeking additional protections.

15 (b) In the event that a Party is required, by a valid discovery request, to
16 produce a Non-Party’s confidential information in its possession, and the Party is
17 subject to an agreement with the Non-Party not to produce the Non-Party’s
18 confidential information, then the Party shall:

19 (1) promptly notify in writing the Requesting Party and the Non-
20 Party that some or all of the information requested is subject to a confidentiality
21 agreement with a Non-Party;

22 (2) promptly provide the Non-Party with a copy of the Stipulated
23 Protective Order in this Action, the relevant discovery request(s), and a reasonably
24 specific description of the information requested; and

25 (3) make the information requested available for inspection by the
26 Non-Party, if requested.

27 (c) If the Non-Party fails to seek a protective order from this court
28 within 21 days of receiving the notice and accompanying information, the Receiving

1 Party may produce the Non-Party's confidential information responsive to the
2 discovery request. If the Non-Party timely seeks a protective order, the Receiving
3 Party shall not produce any information in its possession or control that is subject to
4 the confidentiality agreement with the Non-Party before a determination by the
5 court. Absent a court order to the contrary, the Non-Party shall bear the burden and
6 expense of seeking protection in this court of its Protected Material.

7 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
9 Protected Material to any person or in any circumstance not authorized under this
10 Stipulated Protective Order, the Receiving Party must immediately

- 11 (a) notify in writing the Designating Party of the unauthorized disclosures;
- 12 (b) use its best efforts to retrieve all unauthorized copies of the Protected
13 Material;
- 14 (c) inform the person or persons to whom unauthorized disclosures were
15 made of all the terms of this Order; and
- 16 (d) request such person or persons to execute the "Acknowledgment and
17 Agreement to Be Bound" that is attached hereto as Exhibit A.

18 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
19 PROTECTED MATERIAL

20 When a Producing Party gives notice to Receiving Parties that certain
21 inadvertently produced material is subject to a claim of privilege or other protection,
22 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
23 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
24 may be established in an e-discovery order that provides for production without prior
25 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
26 parties reach an agreement on the effect of disclosure of a communication or
27 information covered by the attorney-client privilege or work product protection, the
28 parties may incorporate their agreement in the stipulated protective order submitted

1 to the court provided the court so allows.

2 12. MISCELLANEOUS

3 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
4 person to seek its modification by the court in the future.

5 12.2 Right to Assert Other Objections. By stipulating to the entry of this
6 Protective Order, no Party waives any right it otherwise would have to object to
7 disclosing or producing any information or item on any ground not addressed in this
8 Order. Similarly, no Party waives any right to object on any ground to use in
9 evidence of any of the material covered by this Order.

10 12.3 Filing Protected Material. A Party that seeks to file under seal any
11 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
12 only be filed under seal pursuant to a court order authorizing the sealing of the
13 specific Protected Material at issue. If a Party's request to file Protected Material
14 under seal is denied by the court, then the Receiving Party may file the information
15 in the public record unless otherwise instructed by the court.

16 13. FINAL DISPOSITION

17 After the final disposition of this Action, as defined in paragraph 4, within 60
18 days of a written request by the Designating Party, each Receiving Party must return
19 all Protected Material and copies thereof to the Producing Party or agree with
20 counsel for the Producing Party upon the appropriate method of destruction or other
21 disposition of such Protected Material. As used in this subdivision, "all Protected
22 Material" includes all copies, abstracts, compilations, summaries, and any other
23 format reproducing or capturing any of the Protected Material. Whether the
24 Protected Material is returned or destroyed, the Receiving Party must submit a
25 written certification to the Producing Party (and, if not the same person or entity, to
26 the Designating Party) by the 60-day deadline that

27 (1) identifies (by category, where appropriate) all the Protected Material
28 that was returned or destroyed; and

1 (2) affirms that the Receiving Party has not retained any copies, abstracts,
2 compilations, summaries or any other format reproducing or capturing any of the
3 Protected Material.

4 Notwithstanding this provision, Counsel are entitled to retain an archival copy
5 of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
6 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
7 work product, and consultant and expert work product, even if such materials contain
8 Protected Material. Any such archival copies that contain or constitute Protected
9 Material remain subject to this Order as set forth in Section 4 (DURATION).

10 14. Any violation of this Order may be punished by any and all appropriate
11 measures including, without limitation, contempt proceedings and/or monetary
12 sanctions.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
2
3

4 DATED: June 15, 2018
5
6

OGLETREE, DEAKINS, NASH, SMOAK
& STEWART, P.C.

7 By: /s/ Minh P. Ngo
8 Johnnie A. James
Minh P. Ngo

9 Attorneys for Defendant
10 PETSMART, INC.

11 DATED: 5/30/ 2018
12
13

JAY S. ROTHMAN & ASSOCIATES

14 By: /s/ Jay S. Rothman
15 Jay S. Rothman

16 Attorneys for Plaintiff
17 HANA KING
18
19

20 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.
21
22

23 Date: June 22, 2018
24



25 HON. JEAN P. ROSENBLUTH
26 United States Magistrate Judge
27
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [full name], of
_____, [full address], declare under
penalty of perjury that I have read in its entirety and understand the Stipulated
Protective Order that was issued by the United States District Court for the Central
District of California on _____ [date] in the case of *Hana King v. PetSmart,
Inc. et al., case no. 2:18-cv-4517 JAK (JPRx)* I agree to comply with and to be
bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and punishment
in the nature of contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Stipulated Protective Order to any
person or entity except in strict compliance with the provisions of this Order.
I further agree to submit to the jurisdiction of the United States District Court for the
Central District of California for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of
this Action. I hereby appoint _____ [full name] of
_____ [full address and telephone number] as my
California agent for service of process in connection with this Action or any
proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where signed: _____

Printed name: _____

Signature: _____